

1 requested dismissal of the case against Folks.” Therefore, Plaintiff argues, drafting a Motion
2 to Dismiss was not reasonable.


3 Plaintiff is incorrect. The statute states that the trustee is to be dismissed immediately;
4 a motion to dismiss is the (or, at least, a) appropriate way to make sure the statute’s mandate
5 is fulfilled. Defendant’s Motion is a mere five pages and there is no sign that Defendant’s
6 counsel unreasonably accrued legal fees in anticipation of recovery from Defendant. Nor did
7 Defendant have, to this Court’s knowledge, any reason to suspect Plaintiff welcome a request
8 for dismissal after a phone call; the Complaint does not state so. Compounding the
9 confusion, Plaintiff seems to argue that Defendant’s counsel should have called his counsel,
10 despite the fact that he was appearing *pro se* until well after this motion was filed. And, of
11 course, Plaintiff could have made the same call before Defendant was obligated to file the
12 Motion to Dismiss. Attorney fees are due under the statute.

13 Accordingly,

14 **IT IS ORDERED** Defendant’s Motion is **GRANTED**. The Complaint against Folks
15 & O’Connor is dismissed with prejudice.

16 **FURTHER ORDERED** Folks & O’Connor is awarded its attorney fees and costs
17 pursuant to A.R.S. § 33-807(E). Folks & O’Connor shall submit documentation of these fees
18 and costs in accordance with L. R. Civ. 54.2.

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20 DATED this 16th day of July, 2009.

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25 Roslyn O. Silver
26 United States District Judge
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